



California Fair Political Practices Commission

March 22, 1989

James L. Ashford
Principal Deputy
Legislative Counsel of California
3021 State Capitol
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-89-147

Dear Mr. Ashford:

This is in response to your request for advice concerning the effect of the recent ruling in the case of Watson, et al. v. The Rules Committee of the Senate of the State of California, Los Angeles County Superior Court, Case No. C691676 (hereafter, "Watson case"), upon the Commission's enforcement of Government Code Section 89001 and Commission Regulation 18901.^{1/}

QUESTION

Will the Commission, in response to the court ruling in the Watson case, continue to enforce Section 89001 and Regulation 18901?

CONCLUSION

Pending an appellate court ruling, the Commission must continue to enforce Section 89001. Any statute or regulation, including Regulation 18901, related thereto will also be enforced. Should an appellate court uphold the ruling in the Watson case, the Commission would reconsider its obligation to enforce Section 89001.

^{1/} Section 89001 is located in the Political Reform Act, which encompasses Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

On June 7, 1988, California voters approved Proposition 73, which amended the Political Reform Act. Proposition 73, which was entitled the "Campaign Contribution Limits Without Taxpayer Financing Amendments to the Political Reform Act," contained several changes to the manner in which election campaigns were operated in California.

One of these changes applied to the use of public moneys in the sending of mass mailings and newsletters. Specifically, Proposition 73 amended Section 89001 to read as follows:

No newsletter or other mass mailing shall be sent at public expense.

Section 89001 became effective on June 8, 1988. (Cal. Const., Art. II, Sec. 10.)

In response to the adoption of Section 89001, the Commission adopted emergency Regulation 18901, effective August 8, 1988. This regulation was approved by the Office of Administrative Law on March 13, 1989. It will become effective on a permanent basis on April 12, 1989. A copy of permanent Regulation 18901 is enclosed for your reference.

At a hearing on February 9, 1989, the court in the Watson case declared Section 89001 to be unconstitutional and of no force or effect.^{2/} The Commission was not a party in this case.

ANALYSIS

Section 83111 requires the Commission to administer and implement the Political Reform Act. Since Section 89001 is contained within the Act, the Commission is legally bound to enforce its provisions.

As described above, the court in the Watson case declared Section 89001 to be unconstitutional and unenforceable. However, the Commission was not a named party in that case. Therefore, the ruling is not binding on the Commission. (Code of Civil Procedure Section 1917; Tiffany Records, Inc. v. M.B. Krupp Distributors, Inc. (1969) 276 Cal. App. 2d 610.)

In addition, Article III, Section 3.5 of the California Constitution states:

^{2/} Judgment on the court's ruling was officially entered on February 17, 1989.

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An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) to declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional ...

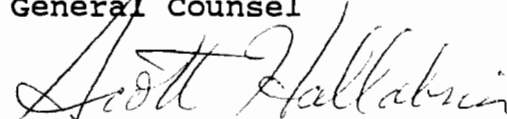
Thus, since the Watson case was decided at the superior court level, the Commission may not refuse to enforce Section 89001 on the basis of unconstitutionality.

On this basis, the Commission must continue the enforcement of Section 89001. Any statutes or regulations related to that section will also be enforced. Should the Watson case be appealed and the superior court ruling upheld, the Commission would, of course, reconsider its obligation to enforce Section 89001.

Should you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Scott Hallabrin
Counsel, Legal Division

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John Larson, Chairman
Fair Political Practices Commission
428 J Street, Suite 800
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Dear Chairman Larson:

It is the understanding of the Senate Committee on Rules that at the meeting of the Fair Political Practices Commission on February 10, 1989, the commission determined that in light of Section 3.5 of Article III of the California Constitution, the commission would continue to enforce Section 89001 of the Government Code, as amended by Proposition 73, approved by the voters at the June 1988 direct primary election, and would continue to enforce the regulation adopted thereunder (2 Cal. Code Regs. 18901), notwithstanding the judgment of the Superior Court for the County of Los Angeles in the case of Watson, et al. v The Rules Committee of the Senate of the State of California, (Case No. 691 676) that Section 89001 is unconstitutional.

By this letter the Senate Committee on Rules formally requests written advice pursuant to subdivision (b) of Section 83114 of the Government Code, with respect to the committee's duties under the Political Reform Act of 1974. Please advise the committee whether the commission is of the view that Section 89001, as amended by Proposition 73, and 2 Cal. Code Regs. 18901, are still in full force and effect, pending a decision of an

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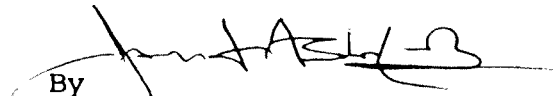
Mr. John Larson p. 2

appellate court to the contrary, and whether the commission therefore intends to enforce the provisions of Section 89001, as amended, and the regulation.

The committee requests that the commission's written advice be provided as soon as possible. Thank you for your attention to this matter.

Very truly yours,

Bion M. Gregory
Legislative Counsel


By
James L. Ashford
Principal Deputy

JLA:jf